National Energy Board | Office national de l'énergie

Reasons for Decision

Westcoast Energy Inc.

GH-2-2002

November 2002

Facilities

National Energy Board

Reasons for Decision

In the Matter of

Westcoast Energy Inc.

Grizzly Extension Pipeline and the Weejay Lateral

GH-2-2002

November 2002

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Table of Contents

Abbreviations iii

Recital and Appearances iv

1. Introduction 1

2. Facilities Design and Safety Considerations 4
2.1 Facilities 4
2.1.1 Facilities Description 4
2.1.2 Appropriateness of the Design 4
2.2 Safety Considerations 5

3. Land, Socio-Economic and Environment Matters 8
3.1 Route Description 8
3.2 Route Selection 8
3.3 Land Requirements 10
3.4 Public Consultation 11
3.4.1 Early Public Notification 11
3.4.2 Access Management and Control 12
3.4.3 Aboriginal Consultation 16
3.5 Socio-Economic Matters and Land Use 18
3.5.1 Socio Economic Matters 18
3.5.2 Land Use 22
3.6 Environmental Matters 24

4. Financial Regulation and Economic Feasibility 25
4.1 Financial Regulation 25
4.2 Economic Feasibility 25
4.2.1 Supply 25
4.2.2 Markets and Transportation Contracts 26

5. Disposition 28

List of Tables

2-1 Pipe specifications for the proposed Grizzly Extension and Weejay Lateral pipelines 5
3-1 Proposed Conditions 14
4-1 Service Agreements 27

List of Figures

1-1 Grizzly Pipeline Extension and Weejay Lateral 3

List of Appendices

I List of Issues 29
II Certificate Conditions 30
III Board Ruling 33

Approximate Conversions

1 metre = 3.28 feet
1 kilometre = 0.62 miles
1 cubic metre = 35.3 cubic feet
1 000 kilopascal = 145 psi

Abbreviations

AMP	Access Management Plan
Agency	Canadian Environmental Assessment Agency
B.C.	British Columbia
Bcf	Billion cubic feet
BP	BP Canada Energy Corporation
Board or NEB	National Energy Board
CEAA	Canadian Environmental Assessment Act
CSA	Canadian Standards Association
CSR	Comprehensive Study Report
Devon	Devon Canada Corporation
District	The District of Tumbler Ridge
DFO	Department of Fisheries and Oceans Canada
ERP	Emergency Response Plan
ERW	Electronic Resistance Welding
EPP	Environmental Protection Plan
Framework	Framework for Light-Handed Regulation
H_2S	Hydrogen Sulfide
J	Joules
km	kilometre
KP	Kilometre Post
kPa	kilopascal
LBC	Line-Break Control
LRMP	Land Use and Resource Management Plan
LSD	Legal Sub Division
m	metre
mm	millimetre
MMcf/d	million cubic feet per day
NACE	National Association of Corrosion Engineers
NEB Act	*National Energy Board Act*
OD	Outside Diameter
OPR-99	*Onshore Pipeline Regulations, 1999*
Project	Grizzly Extension Pipeline and the Weejay Lateral project
RGT	Raw Gas Transmission
SCADA	Supervisory Control and Data Acquisition
TLU	Traditional Land Use
VEC	Valued Environmental Components
Wapiti	Wapiti River Outfitters
Westcoast	Westcoast Energy Inc.
m^3	cubic meter
m^3/d	cubic meters per day
$10^3m^3/d$	thousand cubic metres per day
10^6m^3	million cubic metres
°C	degrees celsius
%	percent

Recital and Appearances

IN THE MATTER OF the *National Energy Board Act* (the "NEB Act") and the Regulations made thereunder;

IN THE MATTER OF an application dated 31 January 2001 from Westcoast Energy Inc. for a Certificate of Public Convenience and Necessity pursuant to Part III, section 52 of the NEB Act authorizing the construction and operation of the Grizzly Extension Pipeline and Weejay Lateral;

IN THE MATTER OF the National Energy Board Hearing Order GH-2-2002, as amended;

HEARD at Chetwynd, British Columbia on 25, 26, and 27 June 2002;

BEFORE:

C.L. Dybwad	Chair
J.A. Snider	Member
J.S. Bulger	Member

APPEARANCES:

J. Lutes R. Sirett	Westcoast Energy Inc.
R. Neufeld	BP Canada Energy Corporation and Devon Canada Corporation
P. Demmer	Wapiti River Outfitters
W. Andrews	Counsel for J. Biem
D. Embree	On his own behalf
A. Mackie	On his own behalf
J. Mason	On her own behalf
D. McPhee	Aseniwuche Winewak Nation of Canada
G. Gurnsey	McLeod Lake Indian Band
M. McLaughlin	District of Tumbler Ridge
P. Enderwick C. Briand	National Energy Board Counsel

Chapter 1

Introduction

On 31 January 2001, Westcoast Energy Inc. (Westcoast) applied for a certificate of public convenience and necessity pursuant to section 52 of the *National Energy Board Act* (the NEB Act) to construct and operate the Grizzly Extension Pipeline and the Weejay Lateral (the Project).

The proposed pipeline facilities would transport raw sour gas from the Ojay/Weejay and Narraway areas in British Columbia (B.C.) and Alberta to Westcoast's existing Raw Gas Transmission (RGT) system for delivery and treatment at the Pine River Gas Plant. The proposed 406 mm (16 inch) OD Grizzly Extension Pipeline would be approximately 109.5 km in length and would extend the Grizzly RGT system from the existing 508 mm (20 inch) OD Grizzly pipeline at a-74-G/93-I-15 in B.C. to a proposed producer receipt point at LSD 5-3-63-11-W6M in Alberta. The proposed 273 mm (10.75 inch) OD Weejay Lateral Pipeline would be approximately 5.0 km in length and would extend from the proposed Grizzly Extension Pipeline at c-53-F/93-I-9 in B.C. at Kilometre Post (KP) 43.2 to a producer well at d-57-G/93-I-9 in B.C. The proposed pipelines are shown in Figure 1-1.

Pursuant to the *Canadian Environmental Assessment Act* (CEAA), the environmental assessment process for the Project commenced on 16 February 2001 with the issuance of letters under section 5 of the *Regulations Respecting the Coordination by Federal Authorities of Environmental Procedures and Requirements*. By letter of 9 April 2001 the National Energy Board (the Board) advised Westcoast that, as the Project required more than 75 km of new right of way, a comprehensive study was required under the CEAA. The Board also requested input to assist in determining the scope of the environmental assessment from those federal authorities who had expressed an interest in the Project. As responsible authorities for the Project, the Board and the Department of Fisheries and Oceans Canada (DFO), established a process for the preparation of the comprehensive study report (CSR). The participants in the process included Westcoast, DFO, and Board Staff. Environment Canada and the Canadian Environmental Assessment Agency (the Agency) also participated by providing specialist advice as federal authorities.

On 20 July 2001, Westcoast submitted a draft CSR to the Board and the above mentioned federal departments and the Agency. By letter of 25 September 2001, the responsible and federal authorities provided Westcoast with a review of the draft CSR. In response, Westcoast submitted a revised draft CSR dated 4 January 2002. By letter of 8 February 2002, the Board advised Westcoast that the CSR could not be deemed complete and that the Board was withdrawing from Westcoast the responsibility for the preparation of the CSR. The Board stated that it would proceed to consider the section 52 application for the Project and that the CSR would be prepared by the Board as part of that process, following the completion of the Hearing. More information on the CSR is provided in Section 3.6 of these Reasons.

The Board decided to consider the application in an oral public Hearing and issued Hearing Order GH-2-2002 on 15 March 2002, which set out the Directions on Procedure. The Hearing was held in Chetwynd, B.C. on 25, 26, and 27 June 2002.

A notice of motion was filed on behalf of Ms. J. Biem, prior to the commencement of the oral Hearing, in regard to the process for completing the CSR. A written process was established for submissions on the motion. Specifically the motion sought a determination of the following issues:

1. Would it be a violation of the principles of natural justice for the Board to decide whether to issue a certificate of public convenience and necessity under section 52 of [the Act or the NEB Act] in this matter based in part on consideration of a [CSR] under the CEAA the contents of which were finalized *after* the conclusion of the Board's oral public hearing concerning the section 52 application?

2. Would it be contrary to the CEAA and beyond the NEB's jurisdiction under the CEAA for the Board to complete a public oral hearing regarding an application under section 52 of the NEB Act before completing a CSR of the proposed project?

The Board concluded in its ruling of 18 June 2002, that both questions should be answered in the negative. The full text of that ruling is set out in Appendix III of these Reasons.

On 9 October 2002, Judith Snider, part of the three member Board Panel for the GH-2-2002 hearing was appointed to the Federal Court of Canada, Trial Division. Pursuant to paragraph 16(2)(b) of the NEB Act, the decision on the Application has been taken by the remaining members of the Board Panel.

Figure 1-1
Grizzly Pipeline Extension and Weejay Lateral

Chapter 2

Facilities Design and Safety Considerations

2.1 Facilities

2.1.1 Facilities Description

The proposed Grizzly Extension pipeline would have an OD of 406 mm (16 inch) and be approximately 109.5 km in length. The proposed Weejay Lateral Pipeline would have an OD of 273 mm (10.75 inch) and be approximately 5.0 km in length. The Project would also include the following:

- block valves and line-break control (LBC) valve assemblies,
- pigging facilities and associated blowdown valves, and
- an expanded communications network for the Grizzly Valley area with new microwave radio communication coverage along the proposed Grizzly Extension Pipeline route.

The Project would provide sufficient capacity at start-up to deliver approximately 2 690 10^3 m^3/d (95 MMcfd) of raw gas and would be able to accommodate expected future deliverabilities based on the potential in the area.

2.1.2 Appropriateness of the Design

The design specifications for the Grizzly Extension and Weejay Lateral pipelines are summarized in Table 2.1.

The proposed facilities would be designed, constructed, tested and maintained in accordance with the Canadian Standards Association (CSA) Z662-99, the provisions of the NEB Act, the *Onshore Pipeline Regulations, 1999* (OPR-99), and other appropriate governing legislation and codes.

The pipe to be used in this Project would meet or exceed CSA Z245.1-98. Line pipe would be manufactured to CSA Z245.1-98 and Cimarron Engineering Ltd. Specification CGS-PP-1. All valves fittings and flanges would be in accordance with CSA Z245.15-96, CSA Z245.11-96 and CSA Z245.12-96, respectively.

All pipe and components would be manufactured in accordance with NACE MR0175 for sulfide stress cracking resistance. In addition, all pipe and components would be supplied with specific metallurgical requirements to meet the dry sour service application. The expected gas composition of the Project would include 13% hydrogen sulphide (H_2S) and 8.27% carbon dioxide. Westcoast would ensure that the gas entering the applied-for pipelines is properly dehydrated and does not have a water dewpoint in excess of -10°C.

Table 2-1
Pipe specifications for the proposed Grizzly Extension and Weejay Lateral pipelines

Pipeline OD (mm)	Application	Wall Thickness (mm)	Grade	Fabrication	Absorbed Energy* (J)	Design Temperature (C)	Design Pressure (kPa)	Maximum Operating Pressure (kPa)
Grizzly Extension 406 mm	Class 1	6.8	414 Cat II	ERW	75	-5 to +54	9930	9930
	Roads within class 1	8.2	414 Cat II	ERW	100	-5 to +54	9930	9930
	Directional Drills Aerial Crossings	8.2	414 Cat II	ERW	94	-45 to +54	9930	9930
Weejay Lateral 273 mm	Class 1	6.4	359 Cat II	ERW	94	-5 to +54	9930	9930
	Roads within class 1	6.4	359 Cat II	ERW	94	-5 to +54	9930	9930

* Absorbed Energy refers to the work done to fracture a standard notched specimen of the material being tested

2.2 Safety Considerations

Corrosion Protection

External Corrosion
The proposed pipelines would be protected against external corrosion by a mill-applied coating Shaw YJ-1 extruded polyethylene supported by cathodic protection. Shaw YJ-1 conforms with the requirements of CSA Z245.21 "External Polyethylene Coating for Steel Pipelines". The operating temperature range of this coating is -45°C to 65°C. The pipeline welds would be coated with a wrap-around style heat-shrink sleeve.

Pipe to be used for directional drills would be coated with an abrasion coating such as Enviroline 376 or equivalent to prevent damage to the pipeline that could lead to corrosion problems.

Internal Corrosion
Westcoast would have an internal corrosion monitoring and protection program in place for the proposed pipelines.

In-line inspection

Westcoast stated that the proposed pipelines would be designed to accommodate the passage of in-line inspection tools known as pigs. Permanent pigging facilities would be installed at each end of the proposed Grizzly Extension and Weejay Lateral pipelines. Westcoast anticipates that the frequency of pigging activities to clean the pipelines would be weekly. In-line inspection would be performed every 7 to 10 years.

Line-Break Control (LBC) Valves and Leak Detection System

Block valves equipped with automatic line-break control (LBC) would be installed at the end of both pipelines and at approximately KP 17.5, 54.0, and 95.0 along the Grizzly Extension Pipeline. The spacing of the valves was determined based on potential hazards and operational access considerations. The maximum valve spacing distance was also established to limit the extent of the Emergency Planning Zone to a distance similar to that for the existing Grizzly pipeline. Valve locations were selected based on dividing the pipeline into segments that could be isolated and flared in a reasonable length of time, while also considering site accessibility. All valves would be in locations adjacent to existing right of ways or access roads.

The line-break detection and valve operating equipment would consist of gas hydraulic valve actuators with a spring-to-close fail-safe design, pressure transmitters and supervisory control and data acquisition (SCADA) equipment. Pressure and valve status would be relayed to Westcoast's existing SCADA system by expanding the communications network in the Grizzly Valley area. The total reaction time of the LBC valves would vary from 112 seconds for the shortest segment of the Grizzly Extension Pipeline (from KP 0.0 to KP 17.0) to 149 seconds for the longest segment (from KP 54.0 to KP 95.0).

Accidents and Malfunctions

Westcoast submitted that the main hazard of concern associated with a sour gas pipeline is the possibility of exposure to H_2S in the event of an uncontrolled release of sour gas. The effects of exposure to H_2S can range from minor irritation to death depending on the concentration of H_2S, the duration of exposure, and an individual's sensitivity to H_2S.

Westcoast undertook a consequence assessment to evaluate the hazards associated with the exposure to H_2S in the event of an uncontrolled release of sour gas. The assessment was conducted using the Alberta Energy and Utilities Board GASCON2 model for guillotine and partial ruptures. A worst case scenario was described as a guillotine rupture of the longest segment of the pipeline (from KP 54.0 to KP 95.0). Results of the assessment for the worst case scenario identified that a three minute average ground level H_2S concentration of 20 ppm would occur at a maximum distance of 64.9 km, 100 ppm at 16.4 km, and a concentration relating to a 1% probability of lethality at 10.3 km.

The information collected through the consequence assessment would be used to ensure adequate emergency response planning is in place.

Emergency Preparedness and Response

Westcoast committed that the Grizzly Valley Emergency Response Plan would be updated prior to the commencement of operations of the Grizzly Extension and Weejay Lateral pipelines and that it would conform with the expectations set out in the Board's letter of 24 April 2002. This letter was sent to all oil and gas companies under the Board's jurisdiction clarifying the expectations for emergency preparedness and response programs. Westcoast further submitted that it would file its Emergency Response Plan with the Board.

Views of Intervenors

Mr. Mackie stated that the worst case scenario modelling of an accident or malfunction should be based on the possibility of a rupture occurring at a valve site itself. Such a failure would permit two consecutive pipeline segments to release gas as opposed to the one pipeline segment used in Westcoast's consequence assessment.

Ms. Biem stated that the proposed emergency procedures manual should include specific criteria and procedures for notification of guide outfitters, trappers and others who are likely to be in the vicinity of the right of way.

Wapiti River Outfitters (Wapiti) expressed concern that the H_2S warning signs on roads used by Wapiti would have a negative impact on its business due to the potential for its clients to perceive an increased risk. Wapiti also expressed concern regarding the negative effects to wildlife from SO_2 and remnants of H_2S released during flaring.

Views of the Board

Subject to the conditions described below, the Board is satisfied that the proposed facilities would be designed, constructed and operated in accordance with the NEB Act, OPR-99, CSA Z662-99, and other appropriate standards and governing codes. Westcoast has demonstrated that the design of the facilities would be safe and appropriate for the purposes of the proposed service.

The Board will impose conditions in any certificate that may be granted requiring Westcoast to submit various documents pursuant to the OPR-99. These documents would include: (i) a construction safety manual, (ii) a joining program, (iii) a pressure testing program, and (iv) an emergency procedures manual.

In response to Mr. Mackie's concern, Westcoast indicated that the scenarios considered in the consequence assessment reflect the circumstances that Westcoast believes to be reasonable and realistic. The Board is of the view that the information provided by Westcoast with respect to the consequence assessment is satisfactory and Westcoast's analysis of the worst case scenario is reasonable.

Prior to placing the Project in service, Westcoast is required to have an emergency procedures manual in place to address the safety of all persons within the emergency planning zone. The emergency procedures manual is a vital component for the safe operation of a sour gas pipeline. It would be required to include all reasonable notification procedures for all persons who may be using the area. Thus, the Board considers Ms. Biem's concerns would be addressed.

In response to Wapiti's concern about signage, it is noted that signage on the right of way is one of the generally accepted methods of alerting the public to the presence and potential hazards of a pipeline.

Chapter 3

Land, Socio-Economic and Environment Matters

3.1 Route Description

The proposed Grizzly Extension Pipeline would connect the existing 508 mm (20 inch) OD Grizzly pipeline at a-74-G/93-I-15 in B.C. to a proposed producer receipt point at LSD 5-3-63-11-W6M in Alberta. The proposed Weejay Lateral Pipeline would connect the proposed Grizzly Extension Pipeline at c-53-F/93-I-9 in B.C. to a producer well at d-57-G/93-I-9 in B.C.

Westcoast estimates that, by using existing right of way, the amount of new right of way required would be reduced by 36 hectares or 18 % of the total project. Approximately 52.4 km of the proposed Grizzly Extension Pipeline and Weejay Lateral would be alongside and contiguous to existing corridors in the project area.

The proposed microwave radio communication system would be installed at the Compass Hill site located approximately 48 km from Westcoast's existing Grizzly pipeline system.

3.2 Route Selection

Westcoast criteria for the proposed route selection included:

- the location of tie-in points;
- following the geological trend for gas production;
- avoiding, wherever practical, terrain conditions that present construction or operational difficulties;
- using existing access to the maximum extent possible to minimize the development of new access routes;
- minimizing, wherever feasible, conflicts with fish and wildlife resources through avoidance of unique or key habitats;
- avoiding unique or environmentally sensitive areas wherever practical;
- avoiding unacceptable conflicts with other land uses;
- minimizing conflicts with historical resources;
- using existing corridors; and
- public and regulatory input.

During the course of the oral Hearing, BP Canada Energy Corporation (BP) indicated that it had received approval from the British Columbia Oil and Gas Commission for certain facilities in the area of the Project including:

- A gathering line commencing at the eastern end of the proposed Weejay Lateral Pipeline and following this lateral until it intersects the proposed Grizzly Extension Pipeline (BP Gathering Line).
- A 406 mm (16 inch) OD pipeline following the Red Deer Forest service road to about KP 32 (BP 406 mm OD Line).

- At about KP 32, the BP 406 mm OD Line would divert from the Grizzly Extension Pipeline route and run west to well A-11-1, which is connected by a 219 mm (8 inch) OD pipeline to Westcoast's existing 273 mm (10 inch) OD Grizzly Pipeline (BP Downstream Facilities).

BP observed that the size of its BP 406 mm OD Line was selected so that Westcoast could utilize the pipeline as part of its Project, thereby avoiding the need to disturb the area twice to construct two separate pipelines.

Westcoast stated that it would not duplicate facilities and that it was possible that the BP 406 mm OD Line, if built, could be used as part of the Project.

In responses to questions as to why Westcoast would not follow the route of the BP downstream facilities to avoid the area between KP 17 and KP 32, Westcoast submitted that the existing pipelines in the area are all small diameter pipelines and that it would have to build the entire route with a 406 mm (16 inch) OD pipeline. This route would be substantially longer than its proposed route and would require major watercourse crossings at the Wapiti River, Dokken Creek and Fearless Creek.

Westcoast referred to its route selection criteria, set out earlier in this section, which include avoiding steep terrain and deeply incised watercourses, as the primary reasons for not paralleling sections of the existing roads or the proposed route of the BP 406 mm OD pipeline. Westcoast also observed that multi-use utility corridors constitute a good approach in certain areas, but that in some areas deviations from an existing corridor can actually enhance wildlife movement.

During the course of the oral Hearing, Westcoast stated that the alternate routes outlined would require more extensive lateral pipelines to connect the gas. It was Westcoast's position that the route selected would minimize the future need to construct extensive laterals by the gas producers. Westcoast is of the view that the Project and route would have significant economic and environmental benefits.

Westcoast submitted that its route selection was designed to follow the sour gas trend throughout this area and would facilitate orderly development of the gas reserves, thus reducing the proliferation of individual producer gas pipeline facilities in the area.

Westcoast selected the Compass Hill site as the most appropriate site for the installation of the microwave radio as it is on a high point of land and within receiving distance of all LBC valve sites and the existing Grizzly Valley communications network. The Compass Hill site is the only location that could provide the necessary line-of-sight link to the existing radio system and coverage of the pipeline route, LBC valve sites and producer receipt point locations.

Views of the Board

The Board finds the route selection criteria identified by Westcoast to be acceptable. Westcoast has selected a satisfactory route for the pipeline facilities and the communication site location.

3.3 Land Requirements

The Project would be constructed entirely on Crown lands. Westcoast proposes to apply for a temporary permit from the B.C. Assets and Land Corporation for construction of the portion of the Project within B.C. and thereafter apply for a statutory right of way for the long term tenure of the pipelines. On the Alberta side, Westcoast proposes to apply for a Pipeline Agreement from Alberta Environment.

Westcoast stated that it would require an 18 m wide right of way and an additional 10 m of temporary work space alongside and contiguous to the right of way for construction of the proposed Grizzly Extension Pipeline. Westcoast also stated that it would require a 12 m wide right of way and an additional 5 m of temporary work space for the entire length of the Weejay Lateral Pipeline.

Westcoast submitted that it would require the temporary work space for the construction of temporary access onto the right of way (shoo-fly access). The majority of shoo-fly construction would entail clearing short sections of road right of way to access the pipeline right of way from nearby permanent roads. Exceptions to this include: the shoo-fly around the tree bore site at KP 80; two shoo-flies utilizing existing seismic cutlines on the western side of the Narraway Valley between KP 84 and KP 89; and, the shoo-fly development at the Narraway stream crossing. Westcoast stated that the total cumulative length of shoo-fly development for the Project would be approximately 1.6 km.

Westcoast identified the following measures to reduce the width of the right of way:

- scheduling construction during winter would minimize the need for stripping across the whole width of the right of way over areas of fairly level terrain;
- narrowing the right of way and not using extra work space at locations with rare plants or uncommon site-series;
- reducing the working width of the right of way, wherever feasible, at locations where the Project parallels existing corridors; and
- reducing the 10 m width of temporary work space along the proposed right of way wherever possible, including the elimination of the passing lane.

The Compass Hill site would consist of one or two buildings, generators, fuel tanks and a 30 m communication tower. The helicopter landing pad would be constructed in a separate location in close proximity to the fenced in Compass Hill site.

Views of the Board

The Board finds that Westcoast's anticipated requirements for easement and temporary work space are reasonable and justified. The Board notes Westcoast's commitment not to build duplicate pipeline facilities in the area if the BP 406 mm Line is built, and its commitment to minimize linear disturbances along the corridor.

3.4 Public Consultation

3.4.1 Early Public Notification

In its Application, Westcoast outlined its development of a comprehensive approach to consultation with government, community, First Nations, industry and land-based stakeholders. Its overall goal in the development and implementation of stakeholder consultation was to educate and involve external stakeholders throughout the duration of the Project. Westcoast identified the following goals for stakeholder consultation:

- identify stakeholders affected by the Project;
- develop and document an accessible consultation process;
- provide timely and detailed notification to stakeholders of meetings, relevant events, opportunities for input and Project milestones and status;
- advise stakeholders of opportunities to make their viewpoints known to the NEB;
- promote a broad awareness among all affected and interested parties of Project particulars (i.e. Project justification, proposed facility locations, Project schedule, potential impacts);
- collect, disseminate and exchange pertinent Project information with all interested parties;
- provide opportunity for stakeholders to identify issues and concerns; and
- work toward pragmatic resolution of identified issues and concerns.

Westcoast stated that it commenced its Early Public Notification for the Project in September 2000. In October 2000, Westcoast mailed over 1 300 flyers to residences in B.C. and Alberta regarding its Project. Westcoast created a dedicated website for the Project.

During the months of October and November 2000, Westcoast advertised its Project Announcement and Open House invitations to local papers in Chetwynd, Tumbler Ridge and Fort St. John, B.C. and the local paper in Grande Prairie, Alberta. These advertisements ran during the week prior to the scheduled open houses. In addition, posters advertising the open houses were placed in prominent locations in Tumbler Ridge, Chetwynd and Dawson Creek, B.C. and Beaverlodge, Alberta. Radio announcements advertising the open houses were placed with local radio stations to extend invitations to the rural areas.

Westcoast held four open houses/public information meetings, with more than 175 people in attendance. Its open houses were offered in Tumbler Ridge (1-2 November 2000), Chetwynd (2 November 2000), Dawson Creek (6 November 2000) and Beaverlodge (7 November 2000).

Westcoast consulted with local government representatives and agencies in the communities of Chetwynd, Dawson Creek, Tumbler Ridge and Kelly Lake in B.C., Beaverlodge in Alberta and with the Municipal District of Greenview in Valleyview, Alberta. Notification and communications with regulatory and government agencies, local and regional communities, and First Nations took place concurrently in order to provide broadly-based communication and adequate time for comment on the Project.

Westcoast provided Project information to registered trappers, guide/outfitters and the general public and industry representatives. Further information on Westcoast's Aboriginal Consultation is provided in section 3.4.3.

In its Application, Westcoast submitted a table of key issues raised by stakeholders during its public consultation process. The key issues identified included matters of employment and business opportunities, the environment, land use, access, and safety. These matters are addressed in the CSR and throughout these Reasons.

Views of the Board

The Board has considered Westcoast's public consultation process, including its open house program, information mail-outs, meetings and telephone contacts. The Board is of the view that, based on Westcoast's Early Public Notification and ongoing public consultation efforts with the affected parties, the public and the regulatory departments and agencies, Westcoast's public consultation has been adequate.

Westcoast is reminded of its commitment to continue to respond to all questions and inquiries from its stakeholders throughout all phases of the proposed Project. Accordingly, should Westcoast undertake changes to the pipeline route and its access management measures, as a result of its consultation with the affected parties, it shall advise the Board of those changes when applying for approval of the plans, profiles and books of reference.

3.4.2 Access Management and Control

Access development and access management were identified as key stakeholder concerns during the issue scoping process. Westcoast responded by sponsoring a workshop in Dawson Creek, B.C. on 1 March 2001 to allow local and regional stakeholders an opportunity to identify and discuss potential access management and control measures for the Project. Six Westcoast representatives and 12 other participants representing individual guide/outfitters, trappers, First Nations, and the B.C. provincial government attended the workshop.

The following is a summary of key issues discussed at the access management workshop:

- access to Crown lands should not be restricted unless there are known public safety concerns or the access is in an area of sensitive wildlife habitat;
- new access potentially adversely affects caribou habitat near the B.C./Alberta border;
- new access potentially increases hunting pressures and natural predation;
- new access potentially adversely affects guide/outfitting opportunities;
- access management options should deter incompatible land uses or adverse effects on wildlife; and
- access management plans must accommodate operations and maintenance of the pipeline.

Access management and control options discussed at the workshop included:

- timber rollbacks on right of way;
- earthen or slash berms at access points;

- trenchless pipe installation/directional drills;
- vegetation bulbing/line-of-sight plantings; and
- incorporating dog-legs in right of way alignment.

At the conclusion of the workshop, consensus was reached on the relative success of timber rollbacks as a means of managing access along pipeline right of way in forested areas. Following the workshop, Westcoast also consulted with Alberta provincial government officials regarding caribou habitat protection and the development of a Caribou Protection Plan.

Following these consultations, Westcoast prepared the Access Management Plan for the Project. The goals of the Access Management Plan are: to protect wildlife and associated resource uses; to utilize existing access corridors; and to restrict motorized access into previously unused areas.

Westcoast has also developed specific access control measures for the construction phase of the Project set out in the Environmental Protection Plan which include:

- limiting personal vehicle usage on the site;
- limiting who will gain access onto and along the corridor; and
- using gates to deter unauthorized access.

Westcoast has also committed to monitoring access to the pipeline corridor and the effectiveness of access control measures in key areas during the construction and operation of the Project.

In responding to Wapiti's concern regarding access control measures, Westcoast noted that it has gone to great lengths to ensure that they are not opening up a new recreational access corridor that could influence the quality of hunts that Wapiti's clients would have in the Huguenot Valley.

The issue of access management was discussed at the Hearing and addressed in the CSR. The CSR includes a recommendation requiring Westcoast to develop and file with the Board a copy of the Access Management Program prior to the commencement of construction.

Ms. Beim provided a number of recommendations and comments on a number of proposed Board conditions in respect of Westcoast's proposed Access Management Program, worker and stakeholder education program and post-construction monitoring plan. These recommendations and suggestions are set out in Table 3.1.

Wapiti stated that the Project could have a negative impact on its business and that access control measures are necessary.

Wapiti and Ms. Mason expressed their willingness to work with Westcoast regarding planning of its access control measures. Ms. Mason also stated that she would be willing to assist Westcoast with its post-construction access management monitoring program.

Views of the Board

The Board commends Westcoast's efforts in involving local and regional stakeholders in the access management planning process. Based on Westcoast's submissions and evidence presented at the Hearing, the Board is satisfied with Westcoast's commitments

to implement the measures set out in its Access Management Plan. This plan includes specific measures to: block access; reduce line of sight along the right of way; reduce risk of mortality from hunting and predation; and, mitigate disturbance to important wildlife habitat during construction and operations. To ensure the effectiveness of such measures the Board would include in any certificate that may be issued in respect of the Project the conditions recommended in the CSR.

The Board notes Ms. Biem's recommendations in respect of those conditions. The Board is satisfied that the matters raised by Ms. Biem in this regard are included by the conditions as proposed and in some instances have been addressed in Westcoast's pre-Hearing submissions and Hearing testimony. While the Board expects that Westcoast would address the issues raised by Ms. Biem in its Access Management Program, the Board does not consider it to be necessary to include the suggested level of detail in the proposed conditions. As well, in some cases, such as the recommendation that First Nations peoples and local people act as access monitors, further discussion with those groups and individuals may be necessary.

The Board is also satisfied that the implementation of effective access control measures by Westcoast would help limit additional access into the Huguenot Valley and thus minimize the impacts of the project on Wapiti's guide/outfitting opportunities in the area.

Table 3-1
Proposed Conditions[1]

Proposed Conditions	Comments from Parties
Westcoast shall apply access measures at all present and future clearings, right of ways and any other modifications to the landscape that could result in access to the Project right of way.	Ms. Biem recommended strengthening wording to require Westcoast to prevent any unauthorized motorized access at all present and future clearings, right of ways and any other modifications to the landscape that could result in access to the project right of way.
Westcoast shall develop and file for Board approval, at least 30 days prior to commencement of construction or as otherwise directed by the Board, an access management program which shall include: (a) the goals for monitoring and managing access; (b) the measures and criteria to be used to achieve those goals; (c) the methods for tracking ungulate and carnivore mortality associated with activities on the right of way; (d) public education and awareness program on access control;	Ms. Biem recommended that: 1. the program be filed prior to completion of the CSR; 2. accurate schematics of the proposed access prevention measures be provided; 3. site specific plans for each access prevention measure, similar to stream crossing plans, be provided; 4. Westcoast provide a detailed explanation of how the proposed access prevention measures will prevent unauthorized access via snowmobiles in winter conditions; 5. Westcoast's consultation with stakeholders be limited to the selection of existing access routes intersecting with the Project that would be blocked as part of Westcoast's commitment to reduce off right of way

[1] It is customary during Board hearings to provide, for comment on by parties, proposed conditions for any certificate that might be issued.

(e) the criteria for determining the need for maintenance, repairs, or installation of new access control measures and the maximum time frame for conducting these activities; (f) provisions for consultation on access control with stakeholders; and (g) the reporting frequency.	access and with the basis that there be zero unauthorized motorized access to the Project right of way; 6. the program include a monitoring program incorporating multiple techniques, including electronic devices. First Nation, local personnel, and Westcoast's operational staff should be included in the program; 7. the program include evaluation and reporting on a quarterly basis, with annual summaries for at least three years and continuing afterward for any trouble spots and these reports be posted on the internet and be made available upon request; 8. the program should specifically address access prevention; 9. the public education and awareness program on access prevention be augmented with an industry leadership program in which Westcoast would explain and promote its access control approach to other companies in the oil and gas sector, forestry, mining, and off-road recreation sectors; and 10. Westcoast file, prior to the commencement of construction, copies of correspondence from provincial officials regarding the acceptability of timber salvage plans that incorporate timber required for access prevention measures.
Westcoast shall file with the Board, at least 14 days prior to the commencement of construction or as otherwise directed by the Board: (a) updated alignment sheets; (b) updated water course crossing drawings; and (c) any other updates to its environmental protection plan.	Ms. Biem recommended that: 1. Westcoast file updated access control drawings; 2. a revised environmental education program for the construction phase with a strengthened program for supervised personnel, including contractors, subcontractors and employees thereof, be submitted; 3. Westcoast examine alternative routes and alignments with a view to relocating closer to existing roads; as an example, in the area covered by BP's proposed route; and 4. that the requirements in this condition be filed prior to completion of the CSR.
Unless the Board otherwise directs, Westcoast shall file with the Board, DFO and Environment Canada a post-construction environmental report within six months of the date that the Project is placed in service. The Post-construction environmental report shall describe the issues that have arisen up to the date on which the report is filed and shall: (a) provide a description of all amendments to practices, procedures and recommendations which have been implemented during the construction process; (b) state the issues that have been resolved;	Ms. Biem recommended that: 1. regarding (e) and (f), that Westcoast provide as-built reports of access prevention features that would be suitable for later evaluation of the effectiveness of such features; 2. paragraphs (e) and (f) include a description of monitoring and reporting plans regarding access prevention measures; 3. the post-construction environmental report discuss the results of including industry education regarding access control in Westcoast's continuing industry contact programs.

(c) state the issues that are unresolved and describe the measures which Westcoast proposes to take; (d) include copies of any as-built reports that are prepared in accordance with undertakings made to DFO, and any comments from DFO in respect of those reports; (e) provide a list and suitable map indicating all designated access routes, access control features and the location and type of all temporary facilities; (f) provide detailed alignments depicting the type and location of all as-built access control measures and any other features requiring monitoring; and (g) discuss the results of including public education on access control in Westcoast's continuing awareness program(s).	

3.4.3 Aboriginal Consultation

In its Application, Westcoast submitted that it had identified and contacted a number of Aboriginal groups in respect of the Project. Specifically, Westcoast and its consultants met with representatives of the following aboriginal groups:

- Aseniwuche Winewak Nation
- Horse Lake First Nations
- Kelly Lake Cree Nation
- Kelly Lake First Nations
- Lheidli T'enneh Band
- McLeod Lake Indian Band
- Saulteau First Nations
- Treaty 8 Tribal Association
- West Moberly First Nations

Project specific contacts with the aboriginal groups began in the fall of 2000 and have been ongoing since, with the exception of the Lheidli T'enneh Band and the Treaty 8 Tribal Association who both advised Westcoast that they did not require further information concerning the Project following the initial contacts.

Westcoast has summarized the issues and concerns raised in consultations with Aboriginal groups and how these are being addressed:

- Archaeological and traditional land use (TLU) assessments – Westcoast stated that the fieldwork has been completed, that assessment reports for the B.C. portion of the right of way and preliminary results for the Alberta portion have been filed, and that it would file relevant report updates. This is further addressed in the CSR.

- Mitigating project effects on the exercise of traditional use in the area – Westcoast submitted that, as part of the TLU sites assessment, it has responded to the information gathered and has rerouted a portion of the proposed pipeline to avoid a traditional use area near the Wapiti River. Westcoast's Environmental Protection Plan and Access Management Program include measures to control access to the right of way during construction and operation of the Project, which would mitigate effects on traditional uses and sites. Also, Westcoast has committed to a traditional land use sites monitoring program during construction of the Project.
- Matters related to Aboriginal business, employment and training opportunities – Westcoast stated that it was committed to providing opportunities for Aboriginal participation in the Project, based on qualifications and competitive pricing. Further details of Westcoast's Aboriginal participation commitments for the Project are noted in section 4.5, Socio-Economic Matters.

Westcoast submitted that the Saulteau First Nations, West Moberly First Nations, Kelly Lake First Nations, McLeod Lake Indian Band and the Horse Lake First Nations have advised that they either support the Application or have no objection to the Project proceeding, and that the Kelly Lake Cree Nation is satisfied with the archaeological and TLU studies and has no objections with respect to the Project. Westcoast stated that it understood that the position of each of these communities is final in nature, subject to the company implementing the recommendations from the archaeological and TLU site assessments.

Three First Nations intervened in the Board's Hearing process and filed submissions with respect to their positions. The Saulteau First Nations subsequently withdrew its intervention and stated that it had no objection to the approval of the Project. The McLeod Lake Indian Band filed a written submission which commended Westcoast on its conduct toward the Band and indicated its support for the Project. The McLeod Lake Indian Band stated that it had been aware of the Project for some time and had participated in discussions to ensure their interests and concerns were respected. The McLeod Lake Indian Band went on to say that in its view, "more than adequate consideration has been made to consider and accommodate traditional values and to respond to issues and concerns."

In its written submission, the Aseniwuche Winewak Nation indicated that it was pleased with Westcoast's commitments to the Aseniwuche Winewak Nation in respect of its participation in the traditional land use study, elder site visits and monitoring of the Project with the assistance of its elders. The Aseniwuche Winewak Nation indicated that their support for the Project is subject to their review of the completed CSR, the completion of site visits for the traditional use study and the resolution of possible concerns. Westcoast stated that the Aseniwuche Winewak Nation completed its traditional use site visit with Landsong Consultants in early July, 2002. Both the McLeod Lake Indian Band and the Aseniwuche Winewak Nation were represented at the Hearing and raised no further objections or concerns.

The Horse Lake First Nations/Western Tribal Council did not intervene in the proceeding but submitted a letter to the Board indicating that it had no objection to the approval of the Project.

Views of the Board

Based on the submissions of Westcoast and First Nations, the Board is satisfied that aboriginal persons with possible interests in the Project area were provided with adequate notice of the Project and had sufficient information to clearly understand how the Project could affect them. None of the First Nations raised concerns about the Project at the Hearing and the two intervening First Nations offered support for Westcoast's application. Based on the foregoing, the Board is satisfied that the Project is not likely to infringe any aboriginal rights that may exist in the area.

Further to the recommendation of the CSR, the Board will include conditions requiring Westcoast to submit its final archaeological and TLU sites assessment reports for the Alberta portion of the Project, any revisions to the B.C. reports and agreement between Westcoast and the affected First Nation(s) on mitigation for the outstanding TLU site in B.C.

3.5 Socio-Economic Matters and Land Use

In its Application, Westcoast identified a number of socio-economic and related land use issues, including the effects of the Project on:

- local and regional population demographics;
- local and regional labour force and businesses;
- community services such as accommodations, food services, water and waste services;
- local and regional medical, police, fire and emergency services; and
- regional transportation infrastructure and motor vehicle safety.

In its revised draft CSR of January 2002, Westcoast provided an assessment of Valued Environmental Components that further addressed the following socio-economic related matters:

- land use (chapter 10 of the CSR);
- aboriginal land use and archaeological resources (chapter 11 of the CSR);
- community services and infrastructure (chapter 12 of the CSR); and
- labour and economy (chapter 13 of the CSR).

3.5.1 Socio Economic Matters

Westcoast estimates that 80 person-years of direct pipeline construction employment would be created and that pipeline workforce skills are present in the region. Westcoast has stated 100% of the pipeline construction labour force could be hired within the regional assessment area and that Westcoast's contractors will maximize local business and employment participation wherever there are the requisite skills, equipment and/or competitive prices.

Westcoast has compiled a list of qualified Aboriginal businesses and individuals for the Project. Westcoast has set a minimum goal of 5% and a target of 10 % for Aboriginal employment on the Project. In addition, in September 2001, Westcoast held a workshop for Aboriginal contractors on the tendering and bidding process and has committed to a follow-up workshop to be scheduled once firm construction start dates are available and tender documents are completed.

In response to Hearing questions posed by the District of Tumbler Ridge pertaining to local economic benefits, Westcoast stated that it agreed in principle that rural communities should benefit from resource extraction in adjacent areas. To encourage local participation, Westcoast keeps a registry of companies and individuals that have indicated an interest in working on the Project, which Westcoast provides to its pipeline controlers.

Westcoast indicated that through its contracts, the company asks its contractors to maximize the use of available resources in the local communities, but Westcoast does not impose specific quotas or threshold numbers. Mr. Haughey, on behalf of Westcoast, indicated that the company tries to steer its contractors to local employees and local subcontractors where the capacity exists. He stated that the company thinks "... that is the right thing to do . . . , and it is part of our standard operating procedure in cases like this." He further stated that Westcoast believes it is very important to have a strong economic tie in the communities in which they do business.

Although Westcoast could not estimate the number of local residents that may work on the Project, it expects that its contractors would be employing people from Tumbler Ridge. It added that the benefits to Tumbler Ridge would depend to a great extent on the capacity of businesses and people to provide services required for the Project. Westcoast is committed to utilizing the Tumbler Ridge construction camp for accommodation of a portion of the construction crew.

Westcoast stated that winter construction of the Project would mitigate potential construction impacts on other users of the area, such as Wapiti. It was Westcoast's view that the winter construction period did not overlap with Wapiti's active hunting period in the Huguenot Valley. Westcoast argued that Wapiti's registered guide/outfitting area in B.C. (Approved Hunting Area 719) is a large area within which the proposed pipeline represents a very small corridor. Westcoast further argued that for the very short duration of the construction period, Wapiti has significant alternative options in the region covered by its licence and that the winter construction proposal will result in no material effect to Wapiti's business.

Views of Intervenors

Intervenors raised a number of socio-economic issues and specifically indicated that Westcoast and/or its contractors should:

- provide additional employment and business opportunities information to Tumbler Ridge residents and businesses;
- contact the District of Tumbler Ridge to discuss local business and employment opportunities on the proposed Project;
- maximize local economic benefits to people in the Tumbler Ridge area; and,
- work closely with Wapiti to minimize any negative impacts to their guide/outfitting business during construction and operation of the proposed Project.

Ms. Mason, Ms. Biem and the District of Tumbler Ridge as represented by Mr. McLaughlin, submitted that with the recent closure of the coal mines, Tumbler Ridge is attempting to diversify its economy through various means, including ecotourism which depend on the maintenance of local wilderness. The District stated that since resource extraction activity has local impacts then there should be benefits to local residents and businesses, or they may not support the Project.

The District urged the Board to direct Westcoast to utilize local labour and services, insofar as the Board's mandate would allow. This would include the hiring of subcontractors, the use of camp facilities, and purchasing from retail and commercial outlets.

The District further urged Westcoast to utilize local services and to require its contractors to contact the District to determine the availability of services. The District's Mr. McLaughlin stated that they understand that this must take place in the context of free enterprise and fair competition.

Ms. Biem stated that, as a reporter for the local newspaper, she is aware that it is a constant source of concern that despite all the oil and gas activity in the area, few people in Tumbler Ridge receive any of the economic benefits from that industry.

In commenting on the Board's proposed draft conditions to Westcoast's project, Ms. Biem sought the following addition to the Board's proposed draft condition #6:

> Westcoast file with the Board, at least 14 days prior to commencement of construction or as otherwise directed by the Board, the results of consultations with the residents of the Tumbler Ridge area regarding employment, services and involvement in the economic opportunities of this project.

Wapiti indicated that as the guide/outfitting business is a tourism business which requires wilderness the Project could have a negative impact on its business. Wapiti requested that Westcoast abandon the Huguenot Valley stretch of the proposed pipeline on the basis that winter construction would have a significant negative impact on the wildlife of the area. Wapiti stated that it is not against development but has had to move its hunting camps several times in the past few years owing to increasing oil and gas exploration activities in the area. Wapiti is committed to working with Westcoast to find a solution for further co-existence and cooperation.

In its written argument, the British Columbia Ministry of Energy and Mines submitted that the Project would deliver significant economic benefits in local employment and provincial resource revenue.

Views of the Board

The Board notes Westcoast's intention to maximize local economic benefits by encouraging its contractors to use local resources as they are available. In furtherance of this goal, Westcoast maintains a comprehensive registry of companies and individuals that have expressed an interest in working on the Project, which is provided by Westcoast to its pipeline contractors.

Mr. McLaughlin's request that the Board direct Westcoast to use local labour and resources in the construction of its Project, is in effect a request for a condition to the certificate. In urging the Board to so direct Westcoast, Mr. McLaughlin appeared to recognize that the Board may have a limited mandate to make the direction. The Board has a broad discretion pursuant to section 54 of the NEB Act, to place additional requirements on pipeline companies through conditions to a certificate. The Board has

provided views on how that discretion should be exercised in a previous decision involving Enbridge Pipelines Inc.[1]. In that case the Board said

> In considering whether a proposed condition should be attached to an approval, the practical effects of that condition, based on the circumstances of the particular application must be addressed. Specifically, the Board must have regard for the clarity, certainty and direct relation of the proposed condition to the applied-for project.

The use of local resources depends on the capacity of local businesses and people to provide the services required for the project. Although it is likely that some of the services can be obtained locally, the record does not demonstrate the requisite capacity to provide the services required. Thus there is no certainty that compliance with such a condition would be possible.

In addition to the capacity to provide the necessary goods and services, there are other business considerations such as cost, timeliness of delivery and business relationships, for which a pipeline company may have regard for in deciding where to obtain such goods and services. In the Board's view these are business matters to be determined through mutual agreement between pipeline companies and its suppliers. The practical effect of *directing* Westcoast to obtain its goods and services locally would be to interfere with such business arrangements, which in the Board's view would be inappropriate and unnecessary in this case.

However the Board notes the measures Westcoast has taken to encourage its contractors to use local resources and strongly encourages Westcoast to continue that approach. Further Westcoast's public consultation program has included the District of Tumbler Ridge, has provided regular updates and commits Westcoast to continue to respond to questions and issues throughout all phases of the Project. During the Hearing Mr. McLaughlin invited Westcoast and its contractors to contact him directly in respect of business and employment opportunities, as he works closely with local contractors. Westcoast and Tumbler Ridge are encouraged to share responsibility for initiating and maintaining communications in this regard in an effort to maximize local participation in the Project.

The Board is of the view that appropriate measures are in place to promote ongoing effective communications between Westcoast, its contractors and Tumbler Ridge and other local communities in regard to business and employment opportunities and that such measures will ensure fair local access to those opportunities.

As a result, the Board is of the view that Ms. Biem's recommended condition to require Westcoast to file the results of consultations regarding local involvement in the economic opportunities of the Project is not necessary. Pipeline companies are expected to fulfil all of the commitments that are made in their applications and in the course of Board proceedings.

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1 National Energy Board Reasons for Decision, Enbridge Pipelines Inc. OH-1-2000, May 2001, page 14.

The Board notes that Westcoast would use the existing construction camp in Tumbler Ridge which would likely provide an additional economic benefit to local businesses as a result of purchases made by construction workers in the community. The Board further notes that Westcoast committed to busing workers between the camps and the work site, thus minimizing transportation related impacts on the environment and regional transportation infrastructure.

With regard to the concerns raised by Wapiti, the Board is of the view that winter pipeline construction would likely minimize the potential impact of the pipeline construction on Wapiti's guide/outfitting activities, as the construction period would not overlap with those activities. The Board however, would encourage Wapiti and Westcoast to continue to consult with each other in regard to the timing and location of the construction activity and Wapiti's guide/outfitting activities, to minimize the impacts on Wapiti's business.

The Board concludes that with the implementation of the measures set out in the application and adduced in evidence at the Hearing, the commitments made by Westcoast, and the ongoing consultations with local authorities, the Project will likely result in a positive socio-economic benefit to the region and to the B.C. and Alberta provincial economies. Any adverse socio-economic effects resulting from the Project are unlikely to be significant. Pursuant to the CEAA, the socio-economic effects that arise from changes to the environment resulting from project impacts, are addressed in the CSR.

3.5.2 Land Use

As part of its application and during the oral hearing, Westcoast referred to the Dawson Creek Land Use and Resource Management Plan (LRMP). The LRMP incorporates the principles of integrated resource management into a long-term plan for B.C. Crown land and resource development within the planning area, the Dawson Creek Forest District. (LRMP, Executive Summary)

Westcoast stated that the LRMP that encompasses the B.C. portion of the pipeline project designates the area as Multiple Resource Use (multi-use area), which includes resource extraction and linear corridor development, such as pipelines, as acceptable uses.

Westcoast submitted that land use and potential impacts to existing land use patterns were assessed in the context of the directions set by the LRMP. Furthermore, consideration had also been given to issues associated with existing use of the land for recreation, guide/outfitting, fur and timber harvesting, other energy development, visual aesthetics and public access.

Westcoast also advised that routes were selected to avoid unacceptable conflicts with other existing and/or potential land uses (e.g., areas of aboriginal concern, industrial developments, extractive resources such as gravel reserves, and recreation areas).

Westcoast argued that the Province of B.C. has invited oil and gas development in the area, that the Dawson Creek LRMP allows for multiple land uses in the area, and that other interests benefit from the access that corridors such as pipeline right of ways provide.

Views of Intervenors

Wapiti requested that Westcoast abandon the Huguenot Valley stretch of the proposed pipeline on the basis that winter construction would have a significant negative impact on the wildlife of the area. Wapiti stated that they are not against development but have had to move their hunting camps several times in the past few years owing to increasing oil and gas exploration activities in the area.

Wapiti argued that "multiple use" doesn't mean "single use" and that small businesses such as the guide/outfitting business "should also have their chance to exist, to co-exist, to cooperate." Wapiti indicated that it is committed to working with Westcoast to find a solution for further co-existence and cooperation.

Views of the Board

In justifying its Project in this area where other and, from time to time, competing activities are carried out, Westcoast referred to and appeared to rely on the Dawson Creek Land and Resource Management Plan. That Plan designates the area in which the Project is located as Multiple Resource Use and promotes the development of renewable and non-renewable resources. However, such a designation on its own does not remove the potential for conflicts among the various users of an area. The Board must still consider the impact of the Project on competing interests in an area, when deciding whether to approve a particular pipeline project.

Accordingly, the Board has reviewed the evidence of Westcoast and other parties whose use of the land in the area may be in conflict with the Project. In particular, the Board notes:

- the inclusion of "land uses" in route selection criteria used by Westcoast;
- the winter construction of the Project;
- the commitment of Westcoast to avoid duplication of facilities;
- the commitment of Westcoast to carry out ongoing consultations with stakeholders; and
- the potential for this Project to minimize the need for a future proliferation of small-diameter gathering lines which could increase the potential for land use conflicts.

A key element in avoiding conflict and ensuring that appropriate development is planned in an area of multi resource use is meaningful consultation among the various interests/land users. In the Board's view, this Project provides Westcoast with an opportunity to play a significant role in facilitating ongoing consultation with the other users of the Project area.

Based on the evidence, the Board is satisfied that the proposed facilities would not interfere unduly with the current use of the area for hunting, tourism or other activities.

3.6 Environmental Matters

The Board completed a CSR for the Project in order to satisfy the requirements of the CEAA and also to satisfy its responsibilities pursuant to section 52 of the NEB Act relating to environmental matters. The CSR took into consideration comments from the public, as well as advice from DFO. The CSR described the Project, the environmental assessment process, the potential environmental effects, the assessment methodology, the mitigative measures, and the criteria used in evaluating the significance of the environmental effects. Conclusions and recommendations regarding the significance of the Project's potential adverse environmental effects were provided throughout the CSR.

Both the Board and DFO concluded that the Project is not likely to cause significant adverse environmental effects provided that the mitigative measures and undertakings committed to by Westcoast are implemented together with the recommendations contained in the CSR.

The Agency facilitated a public comment process on the CSR between 27 September 2002 and 27 October 2002. Following receipt of comments and responses from the Board and DFO, the CSR was forwarded to the Minister of the Environment for a decision on the course of action to be taken under section 23 of the CEAA. The Board's decision on Westcoast's certificate application was reserved pending that determination.

Having taken into consideration the CSR, public comments filed pursuant to subsection 22(2) of the CEAA and the Agency's recommendations, the Minister of the Environment concluded that the Grizzly Extension and Weejay Lateral pipelines are not likely to cause significant adverse environmental effects. As a result, the Minister of the Environment referred Westcoast's proposed Grizzly Extension Pipeline and Weejay Lateral back to the Board and DFO for action under section 37 of the CEAA.

Views of the Board

Upon receipt of the referral from the Minister of the Environment, the Board has considered the CSR and is of the view that, with the implementation of Westcoast's proposed mitigative measures and the recommendations set forth in the CSR, the Project is not likely to cause significant adverse environmental effects. In this regard, the Board will incorporate all recommended conditions as described in the CSR into any certificate issued to Westcoast for the Project.

The eleven recommendations contained in Chapter 16 of the CSR (and which appear in Appendix II of these Reasons as certificate conditions 1 through 11) describe the procedures that would be put in place to inspect, monitor and follow up on environmental issues relevant to the Project, should a certificate be issued. It should be noted that the Board will carry out its own inspections and audits in accordance with the relevant legislation and conditions of approval to ensure further protection of the public, employees of the company, and environment.

Chapter 4

Financial Regulation and Economic Feasibility

4.1 Financial Regulation

The Project would be regulated according to the Framework for Light-Handed Regulation (Framework) developed for Westcoast's gathering and processing system as an amendment to the Multi-year Incentive Toll Settlement, dated 16 May 1997 and approved by the Board in RH-2-97.

Under the Framework, Westcoast is responsible for the utilization of its gathering and processing facilities and negotiates tolls and tariffs with its shippers. As such, financial, toll and tariff matters would be dealt with by the Board on a complaint basis.

Views of the Board

The Board is satisfied that the method of regulation outlined in the Framework sufficiently addresses the issues of tolls and tariffs.

4.2 Economic Feasibility

The Board assesses the economic feasibility of gas pipeline facilities by determining the likelihood of the facilities being used at a reasonable level over their economic life and the likelihood of the demand charges being paid. A determination of economic feasibility normally includes an evaluation of such factors as the availability of long-term gas supply, long-term outlook for gas demand in the markets to be served, and the existence of adequate contractual commitments underpinning the proposal.

4.2.1 Supply

Westcoast provided its evaluation of gas supply that included established and undiscovered natural gas estimates in the B.C. Ojay/Weejay and Alberta Narraway areas. The Ojay/Weejay supply area contains gas deposits primarily in the Pardonet-Baldonnel and Taylor Flats formations. Additional gas deposits can be found in the shallower sands. The Narraway supply area has major sour gas deposits in the Belloy formation.

The two supply areas contain unconnected initial recoverable gas reserves that are drilled and available for production. Westcoast estimated the available volume to be 7 678 10^6m^3 (271 Bcf).

Westcoast estimated the volume of undiscovered raw recoverable gas resources in the Ojay/Weejay area to be 25 410 10^6m^3 (897 Bcf) and 83 199 10^6m^3 (2,937 Bcf) in the Narraway supply area. These estimates equate to a total volume of 108 609 10^6m^3 (3,834 Bcf) for the catchment area.

An examination of future gas potential by Wapiti supported Devon Canada Corporation's (Devon) view that the area between KP 56 and KP 75 was prospective for sour gas. BP indicated that it had identified a gas trend between KP 20 to KP 32.

Westcoast reported an estimate for sweet gas volume of 8 498 10^6m^3 (300 Bcf) from a producer in the Narraway area and indicated that some of the yet undiscovered gas potential could be transported on the proposed pipeline. BP, an active producer in the area, indicated that sweet gas volumes were not enough to flow into the proposed pipeline and it would use its sweet gas supply as fuel gas in its sour gas facilities.

There are no wells currently producing in the catchment area. A combination of production test results, distribution and deliverability estimates of future wells from producers formed the basis of the gas deliverability forecast. Westcoast's forecast of raw gas deliverability rates indicates an initial rate of 3 290 $10^3m^3/d$ (116 MMcf/d) that would increase to a peak of 4 651 $10^3m^3/d$ (164 MMcf/d) by year 5. By year 15, the expected deliverability rate from the catchment area would be about 4 311 $10^3m^3/d$ (152 MMcf/d).

The proposed pipeline would initially be limited to a deliverability rate of 3 455 $10^3m^3/d$ (122 MMcf/d) due to conditions imposed by other downstream producing areas. Westcoast indicated if those conditions regarding gas flow rates were lowered that the Project would have the capacity to deliver the raw gas flow rates described above.

Two producers, Devon and BP, submitted evidence in support of the Project and suggested that the inability of Westcoast to advance the Project in a timely manner has already led to significant producer revenue losses and reduced exploration in the area Devon and BP noted that over 2.8 $10^6m^3/d$ (100 MMcf/d) of raw gas developed at the risk of the exploring companies has been shut-in due to lack of transportation and processing capacity.

4.2.2 Markets and Transportation Contracts

Markets

Westcoast provided an overview of current and future demand for natural gas in B.C. and the U.S. Pacific Northwest. The demand forecast for the core (residential and commercial), industrial and power sectors indicates that an overall average annual growth rate of approximately 2.3 % is expected over the fifteen year period from 2002 to 2016. The electrical power sector is anticipated to lead demand growth as gas fired generation facilities are developed.

Transportation Contracts

Westcoast provided evidence that it has entered into service agreements with three producers for total contract volumes of 3.3 $10^6m^3/d$ (116 MMcf/d), representing approximately 95 % of the pipeline capacity. The lowest volume contract has a term of 5 years, while the remaining two contracts have 15 year terms (Table 4-1). Due to the constraints imposed by the downstream treatment facilities, the Pine River and Kwoen gas plants, Westcoast considers the Project to be fully contracted.

Table 4-1
Service Agreements

Shipper	Raw Volume ($10^6 m^3/d$)	Raw Volume (MMcf/d)	Term (Years)
Producer A	0.8	28.6	15
Producer B	2.2	77.4	15
Producer C	0.3	10	5
Total	**3.3**	**116**	

Views of the Board

The Board is satisfied that the overall gas supply will be sufficient to sustain reasonable utilization rates of the Grizzly Extension Pipeline and Weejay Lateral.

The Board is satisfied that the market forecast provided by Westcoast is reasonable and that shippers have demonstrated support for the Project by committing to long term contracts.

In summary, the Board is satisfied that Westcoast has demonstrated:

- adequate gas supply in the Project area;
- a growing market for the gas to be transported; and
- the existence of long term contracts for transportation on the applied for facilities.

The Board therefore concludes that the applied-for facilities are needed and likely to be used at a reasonable level for the life of the Project.

The Board also notes that, under the Framework for Light-Handed Regulation, the Project is a commercially at risk pipeline and therefore any demand charges would be paid either by shippers or Westcoast's shareholders.

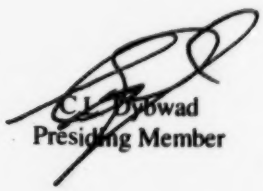
Given that the applied for facilities are likely to be used and any demand charges would be paid, the Board concludes that the Project is economically feasible.

Chapter 5

Disposition

The foregoing constitutes our Decision and Reasons for Decision in respect of the Application heard before the Board in the GH-2-2002 proceeding.

The Board is satisfied from the evidence that the proposed Grizzly Extension Pipeline and Weejay Lateral are and will be required by the present and future public convenience and necessity. The Board approves Westcoast's Application made pursuant to section 52 of the NEB Act for new pipeline facilities and will, subject to the approval of the Governor in Council, issue a certificate subject to the conditions set out in Appendix II.



C.L. Dybwad
Presiding Member

J.S. Bulger
Member

Calgary, Alberta
November 2002

Appendix I

List of Issues

The Directions on Procedure identified, but did not limit itself to, the following issues for discussion in the GH-2-2002 proceeding:

1. The need for the proposed facilities.

2. Consultation with Aboriginal Peoples.

3. The appropriateness of the design and operation of the proposed facilities.

4. The potential environmental and socio-economic effects of proposed facilities including those factors outlined in subsections 16(1) and 16(2) of the *Canadian Environmental Assessment Act*.

5. The appropriateness of the general route of the pipeline.

6. The terms and conditions to be included in any certificate which may be issued.

Appendix II

Certificate Conditions

General

1. Unless the Board otherwise directs Westcoast shall cause the approved facilities to be designed, manufactured, located,constructed and installed in accordance with those specifications, drawings and other information or data set forth in its application or as otherwise adduced in evidence before the Board in the GH-2-2002 proceeding.

2. Unless the Board otherwise directs Westcoast shall implement or cause to be implemented all of the policies, practices, mitigative measures, recommendations and procedures for the protection of the environment referred to in its application, any subsequent filings made in support thereof, or as otherwise adduced in evidence before the Board during the GH-2-2002 proceeding.

Prior to Commencement of Construction

3. Westcoast shall file the following information, at least 14 days prior to the commencement of construction of any water crossing to be constructed during the closure window for fisheries, or as otherwise directed by the Board:
   (a) a water quality monitoring program to be undertaken immediately prior, during and after construction;
   (b) a contingency plan detailing the criteria for any measures that would be implemented as a result of monitoring undertaken pursuant to paragraph (a); and
   (c) evidence as to whether the Department of Fisheries and Oceans Canada (DFO) is satisfied with any programs derived pursuant to paragraph (a) and with the measures described in (b).

4. Westcoast shall file with the Board, at least 14 days prior to the commencement of construction or as otherwise directed by the Board, with respect to the traditional land use site found at UTM location 0663386E 6067418N (site #17 in Landsong, February 2002, Traditional Land Use Sites Assessment Basic Report):
   (a) a description of the measures to be implemented for the mitigation of potential impacts to the site; and
   (b) the results of the consultations with the Kelly Lake First Nations, Kelly Lake Cree Nation, West Moberly First Nations and McLeod Lake Indian Band.

5. Westcoast shall file with the Board, at least 14 days prior to the commencement of construction or as otherwise directed by the Board, any revisions to the Traditional Land Use Sites Assessment and Archaeological Impact Assessment for the British Columbia portions of the Project.

6. Westcoast shall file with the Board for approval, at least 60 days prior to the commencement of construction or as otherwise directed by the Board:
   (a) a Traditional Land Use Sites Assessment report for the Alberta portion of the Project;
   (b) a Heritage Resources Impact Assessment report for the Alberta portion of the Project;

(c) copies of correspondence from the British Columbia and Alberta provincial authorities responsible for Archaeological and Heritage Resources, regarding the acceptability of Westcoast's impact assessment reports and proposed mitigation measures.

7. Westcoast shall develop and file for Board approval, at least 30 days prior to commencement of construction or as otherwise directed by the Board, an Access Management Program which shall include:
   (a) the goals for monitoring and managing access;
   (b) the measures and criteria to be used to achieve those goals;
   (c) the methods for tracking ungulate and large carnivore mortality associated with Westcoast's activities on the right of way and any other mortalities on the right of way which otherwise come to Westcoast's attention;
   (d) a public education and awareness program on access control;
   (e) the criteria for determining the need for maintenance, repairs, or installation of new access control measures and the maximum time frame for conducting these activities;
   (f) provisions for consultation on access control with stakeholders; and
   (e) the reporting frequency.

8. Westcoast shall file with the Board, at least 14 days prior to the commencement of construction or as otherwise directed by the Board:
   (a) updated alignment sheets;
   (b) updated water course crossing drawings;
   (c) updated access control drawings; and
   (d) any other updates to its environmental protection plan.

Post Construction

9. Westcoast shall, at least 30 days prior to placing the Project in service or as otherwise directed by the Board, file the emergency procedures manual required by section 32 of the Board's Onshore Pipeline Regulations 1999.

10. Unless the Board otherwise directs, Westcoast shall file with the Board, DFO and Environment Canada a post-construction environmental report within six months of the date that the Project is placed in service. The Post-construction environmental report shall describe the issues that have arisen up to the date on which the report is filed and shall:
   (a) provide a description of all amendments to practices, procedures and recommendations which have been implemented during the construction process;
   (b) state the issues that have been resolved;
   (c) state the issues that are unresolved and describe the measures which Westcoast proposes to take;
   (d) include copies of any as-built reports that are prepared in accordance with undertakings made to DFO, and any comments from DFO in respect of those reports;
   (e) provide a list and suitable map indicating all designated access routes, access control features and the location and type of all temporary facilities;
   (f) provide detailed alignments depicting the type and location of all as-built access control measures and any other features requiring monitoring; and
   (g) discuss the results of including public education on access control in Westcoast's continuing awareness program(s).

11. Westcoast shall file with the Board, within 30 days of the date that the Project is placed in service, confirmation by an officer of the Company, that the Project was completed and constructed in compliance with the conditions set out in this Certificate and all policies, practices, and procedures included in or referred to in its Application or as otherwise adduced in evidence before the Board during the GH-2-2002. In the case of non-compliance with any of these provisions, Westcoast shall file with the Board a statement of the reasons for the non-compliance.

12. Unless the Board otherwise directs prior to 31 December 2003, this certificate shall expire on 31 December 2003 unless the construction and installation with respect to the applied-for facilities have commenced by that date.

Appendix III

Board Ruling

File 3200-W005-11
18 June 2002

All Parties to Hearing Order GH-2-2002

Westcoast Energy Inc.(Westcoast) Grizzly Extension Pipeline and the Weejay Lateral Hearing Order GH-2-2002
Notice of Motion of Ms. Jenny Biem, Intervenor

Background

A Notice of Motion dated 31 May 2002, was filed with the National Energy Board (the Board or NEB) pursuant to section 35 of the *National Energy Board Rules of Practice and Procedure, 1995* (the Rules) by Mr. William J. Andrews, Barrister and Solicitor on behalf of Ms. Jenny Biem, an intervenor in the above referenced proceeding.

By letter dated 4 June 2002, the Board established a written process for the filing of written answers to the notice of motion by other parties and for the filing of a reply to those answers by Ms. Biem. In response to the request by Ms. Biem that the Board stay the proceeding until the matters raised in the motion could be determined, the Board took the view that a stay was premature given the process established to consider the motion.

Answers to the motion were provided by:

Westcoast,
David and Rosalinde Embree and Alex Mackie,
Ray Proulx,
BP Canada Energy Company (BP) and Devon Canada Corporation (Devon).

By letter dated 13 June 2002, counsel for Ms. Biem filed a reply. The Board notes that counsel for Ms. Biem had not received a copy of the answer provided by David and Rosalinde Embree and Alex Mackie, before the reply was submitted. The Board understands that counsel for Ms. Biem advised Board counsel that the reply would not have been affected by the answer of the Embrees and Mr. Mackie.

Notice of Motion

The notice of motion seeks a determination by the Board of the following questions or issues:

1. Would it be a violation of the principles of natural justice for the Board to decide whether to issue a certificate of public convenience and necessity under section 52 of the *National Energy Board Act* [the Act or the NEB Act] in this matter based in part on consideration of a Comprehensive Study Report [CSR] under the *Canadian Environmental Assessment Act* the contents of which were finalized *after* the conclusion of the Board's oral public hearing concerning the section 52 application?

2. Would it be contrary to the CEAA and beyond the NEB's jurisdiction under the CEAA for the Board to complete a public oral hearing regarding an application under section 52 of the NEB Act before completing a CSR of the proposed project?

Ms. Biem asserts that both questions should be answered in the affirmative.

Question 1. Natural Justice in the Context of the s. 52 Proceeding

On the first question, Ms. Biem argues that the statements made by the Board in regard to the completion of the CSR pursuant to the CEAA, in Hearing Order GH-2-2002 and in the Directions on Procedure (DOP), demonstrate that the Board intends to:

a) complete the oral public hearing before Ms. Biem and other parties to the hearing are aware of the contents of the completed CSR, and

b) rely on the contents of the completed CSR, the contents of which will have been unknown to Ms. Biem and other parties during the oral public hearing, in making its decision under section 52 of the NEB Act.

Ms. Biem submits that both of these conclusions violate the principle of *audi alteram partem* which is applicable to the hearing. Specifically, she submits that the process set out in the Hearing Order and DOP would deprive her and other parties of the opportunity to "know the case to be met" during the oral public hearing. Additionally, the procedure would have the Board obtain information (within the completed CSR and in the form of comments on the completed CSR) after the oral public hearing was completed.

Ms. Biem further submits that should the Board provide her and other parties with the opportunity to comment in writing on information associated with the finalization of the CSR after the completion of the oral hearing, there are barriers to doing so. First she argues that current DOP does not guarantee that comments received on the finalized CSR will be considered by the Board in its section 52 decision. Second, she argues that if the Board were to alter the DOP to provide for consideration of any comments made by parties on the finalized CSR after the completion of the oral public hearing, then there would be an oral public hearing based on incomplete information followed by a written public hearing which is inconsistent with the scheme established by Part II of the Rules.

In the alternative, Ms. Biem argues that even if a breach of natural justice could be rectified on a technical legal level by tacking on a written public hearing following an oral public hearing based on incomplete information, for policy reasons the Board should not do so. She submits that it would be a waste of time to have an oral public hearing concerning among other things, environmental issues, regarding which the information was known to be incomplete. Ms. Biem further submits that it would foster a public perception that the Board was not seriously interested in examining the environmental aspects of the application.

2. Compliance with the CEAA

With respect to the second question, pertaining to the CEAA and the NEB's jurisdiction, Ms. Biem submits that it would be a violation of both the letter and spirit of the CEAA for the NEB to complete an oral public hearing under section 52 of the NEB Act before completing an

environmental assessment of the proposed project. Specifically she argues that the CEAA contemplates that an environmental assessment be carried out either before or contemporaneously with other decision-making by the responsible authority. Ms. Biem submits that the CEAA requires that the CSR be conducted "as early as possible" within the oral public hearing process; not following the completion of the oral public hearing. Ms. Biem submits that the Board's procedures illegally fetter the Minister's discretion because the completion of the CSR, the opportunity for public comment on the CSR, and the Minister of Environment's (the Minister) exercise of discretion under section 23 of the CEAA, will not occur until after the completion of the oral public hearing. She submits that this process will have the practical effect of precluding the Minister from referring the project to a review panel.

Answers to the Motion

Westcoast

Westcoast submits that the premise of Ms. Biem's assertion on the first question is wrong and fails to recognize the separate and distinct functions that the Board is performing with respect to its own regulatory process under the NEB Act and with respect to the environmental assessment of the project being carried out by the two responsible authorities under the CEAA. Westcoast submits that the Board will not be making its section 52 decision based on the CSR but will be basing its decision on the record from the GH-2-2002 proceeding.

Westcoast states that the CSR is required to satisfy the separate requirements of the CEAA and it is the Minister who will decide the course of action to take under section 23 of the CEAA. The Board is using the public hearing as a further forum to gather information for the purpose of completing the CSR, thus ensuring that there is no duplication between the requirements of CEAA and the Board's regulatory process.

Westcoast submits that the process adopted by the Board not only affords Ms. Biem the opportunity in the context of an oral public hearing to comment on and make submissions to the Board on Westcoast's section 52 application, but it also affords that same opportunity with respect to the draft CSR. This opportunity to comment on the comprehensive study at the section 52 hearing is in addition to the right to comment on the CSR during the Minister's public comment period required under subsection 22(2) of the CEAA prior to the Minister making any decision with respect to the CSR under section 23.

Westcoast further submits that there is nothing in the Board's process that in any way fetters the Minister's discretion.

BP Canada Energy Company(BP) and Devon Canada Corporation (Devon)

BP and Devon do not support the motion and submit that the "case to be met" is "the Westcoast application and supporting evidence - not the conclusions of the Board following consideration of that evidence." BP and Devon take the view that the Hearing Order and DOP provide all parties with a full and fair opportunity to be heard and that there is neither a natural justice nor a CEAA compliance issue here.

Ray Proulx

Mr. Ray Proulx supports the motion and is of the view that it is a violation of the principles of natural justice for the Board to proceed with the public hearing before the CSR is completed. He feels that it is insulting to ask him to participate in a public hearing in which he does not have access to full information.

David and Rosalinde Embree and Alex Mackie

The Embrees and Mr. Mackie support the motion and are of the view that the contents of the completed CSR will be of great importance in the decisions that the Board has to make and for public information. Further, it is submitted that all parties interested in the Hearing should not be deprived of the information that a complete CSR would contain.

Reply of Ms. Biem

In further support of Ms. Biem's position, Mr. Andrews has provided a reply to the points raised by Westcoast, BP and Devon.

Views of the Board

Before specifically addressing the questions raised in the motion, the Board will briefly review the facts, and examine the Board's functions and processes under CEAA and the NEB Act in the context of the current proceeding.

Facts

By application of 31 January 2001, Westcoast, applied for a Certificate of Public Convenience and Necessity pursuant to section 52 of the NEB Act to construct and operate the Grizzly Extension Pipeline and the Weejay Lateral from the Ojay/Weejay and Narraway areas in North Eastern British Columbia and Northwestern Alberta to Westcoast's existing Grizzly Raw Gas Transmission System for delivery to the Pine River gas plant in northeastern British Columbia.

By letter of 9 April 2001, the Board advised Westcoast that as the project required more than 75 kilometres of new right of way, a comprehensive study was required under the CEAA. The Board stated that it would propose to the other responsible authorities that the comprehensive study and the development of the CSR be delegated to Westcoast. Subsequently a process was established for the preparation of the CSR which involved Westcoast, Board Staff, and the following federal departments and agencies: Fisheries and Oceans Canada (DFO), a responsible authority, and Environment Canada and the Canadian Environmental Assessment Agency (Agency) that are federal authorities able to provide specialist advice.

Between 17 May 2001 and 8 February 2002, Westcoast submitted to the NEB and the above mentioned federal departments, a draft CSR and a revised draft of the CSR. After considering these drafts, the Board wrote to Westcoast on 8 February 2002, advising that the CSR was not yet complete "particularly in respect of its assessment of the environmental effects of the project on the current use of lands and resources for traditional purposes by aboriginal groups or persons". The Board went on to say that "the current process is unlikely to result in the timely completion of the CSR" and that "the Board has decided to withdraw from Westcoast the

responsibility for the preparation of the CSR". The Board went on to say that it would proceed to consider the section 52 application for the project and that the CSR would be prepared by the Board as part of that process, following the completion of the hearing. This decision had the effect of changing the process for completion of the CSR that was described in the Board's letter of 17 May 2001.
On March 15, 2002, the Board issued Hearing Order GH-2-2002 and Directions on Procedure in which it was stated:

> On 8 February 2002 the Board revoked the delegation of the preparation of the comprehensive study (environmental assessment) from Westcoast and advised that the hearing would be used to complete the comprehensive study. Following the hearing, a comprehensive study report will be prepared and will be forwarded to the Canadian Environmental Assessment Agency for review, public comment and a decision by the Minister of Environment.

In response to concerns raised by DFO with respect to the completion of the CSR, the Board issued a letter and an amendment to the DOP on 10 May 2002, to clarify the process for completing the CSR.

The Board's Mandate

As acknowledged by all parties, the Board has responsibilities under both the *National Energy Board Act* (NEB Act) and under the CEAA. Each of these roles and how the mandates given the Board are respected and how they interact is discussed in the following.

NEB Act
In considering an application under section 52 of the NEB Act for pipeline facilities, the Board takes into consideration a broad range of issues pertaining to the public interest as set out in section 52 of the NEB Act[1]. As part of the public interest, the Board considers the environmental effects of the project.

In establishing a procedure for consideration of any application before it, the Board relies primarily on its Rules of Practice and Procedure. However, as a tribunal, the Board also has considerable flexibility and may use its discretion in setting in place procedures that adhere to the principles of natural justice and that meet the specific needs of an application.

The hearing process in place for most section 52 applications, including this application of Westcoast, consists of both a written and oral process. Parties have the right to pose questions

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1 S. 52. The Board may, subject to the approval of the Governor in Council, issue a certificate in respect of a pipeline if the Board is satisfied that the pipeline is and will be required by the present and future public convenience and necessity and, in considering an application for a certificate, the Board shall have regard to all considerations that appear to it to be relevant, and may have regard to the following:
(a) the availability of oil, gas or any other commodity to the pipeline;
(b) the existence of markets, actual or potential;
(c) the economic feasibility of the pipeline;
(d) the financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity of participating in the financing, engineering and construction of the pipeline; and
(e) any public interest that in the Board's opinion may be affected by the granting or the refusing of the application.
R.S., 1985, c. N-7, s. 52; 1990, c. 7, s. 18; 1996, c. 10, s. 238.

both in writing and orally to the applicant for the purpose of testing its evidence in regard to environmental issues and any other issues of concern, to provide their own evidence on those issues and to provide final argument. In other words, all parties to the proceeding may test and counter all of the evidence as they see fit, subject at all times to the applicable rules of natural justice. The information filed with the application, in combination with the responses to written and oral questions, and the evidence submitted by all parties, constitutes all of the information that is relied on by the Board in taking its decision under section 52 of the NEB Act. Further, information that does not form part of the record is not used by the Board in its deliberations.

However, as is discussed below, no regulatory decisions pursuant to section 52 of the NEB Act may be taken by the Board before the requirements of CEAA have been met.

CEAA

Much of the process followed by the Board in relation to its duties pursuant to CEAA is set out in Ms. Biem's motion and will not be repeated here. However certain steps required under the CEAA warrant further examination.

The CEAA[1] requires that the NEB ensures that an environmental assessment is completed under that Act before the NEB can take a decision pursuant to the NEB Act. One of the stated purposes of the CEAA is:

> To ensure that responsible authorities carry out their responsibilities in a coordinated manner with a view to eliminating unnecessary duplication in the environmental assessment process.[2]

The result is that there must be coordination of procedures to deal with any overlap between the NEB's responsibilities under the NEB Act and the CEAA in respect of environmental matters.

With respect to an application pursuant to section 52 of the NEB Act, the Board is a Responsible Authority.[3] In the processing of an application under section 52 of the NEB Act, the Board must initially determine what level of environmental assessment is required under the CEAA and advise other federal authorities of the project to determine whether there may be other responsible authorities pursuant to CEAA.

Pursuant to section 21 of the CEAA, a responsible authority must ensure that a comprehensive study is conducted and that a CSR is prepared and provided to the Minister and the Agency, or refer the project to the Minister for a referral to a mediator or a review panel in accordance with section 29. In the present case, the CSR route was determined to be appropriate.

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1 subsection 11. (1) Where an environmental assessment of a project is required, the federal authority referred to in section 5 in relation to the project shall ensure that the environmental assessment is conducted as early as is practicable in the planning stages of the project and before irrevocable decisions are made, (emphasis added) and shall be referred to in this Act [CEAA] as the responsible authority in relation to the project.

2 CEAA, subsection 4(b.1).

3 *supra*, note 2.

To avoid duplication of processes where a CSR is required, the Board has used two approaches. The first of these is that, in some instances, preparation of the CSR has been delegated to the proponent. The second approach has been to use its hearing process to adduce evidence in regard to the environmental assessment of the project, for the purpose of preparing a CSR, and fulfilling the Board's public interest mandate. Under the Coordination Regulations[1] each of the responsible authorities must ensure that the CSR is complete and that all matters scoped within the assessment have been considered in the CSR, before the CSR is provided to the Minister and the Agency.

Upon receiving a CSR, the Agency must, as it considers appropriate, facilitate public access to the CSR and publish a notice setting out certain information as described in section 22 of the CEAA. Following that public comment period, the Minister then takes into consideration the CSR and any comments filed during that public comment period, and then takes one of the courses of action as set out in section 23(a) and (b) of the CEAA.

Pursuant to subsection 23(a) of the CEAA, the Minister must refer the project back to the responsible authority if, after considering the implementation of any appropriate mitigation, he or she decides that the project is not likely to cause any significant adverse environmental effects or that the project is likely to cause significant adverse environmental effects that cannot be justified in the circumstances. However, where it is uncertain after taking into account the implementation of any appropriate mitigation measures, that the project is likely to cause significant adverse effects, the Minister shall pursuant to subsection 23(b) of the CEAA, refer the project to a mediator or a review panel in accordance with section 29 of that Act.

If the project is referred back to the Board, the CSR process has run its course and the Board may then proceed to take a course of action described in subsection 37(1) of the CEAA. Where taking into account the implementation of any appropriate mitigation measures, the project is not likely to cause significant adverse environmental effects, the Board may take a regulatory decision under the NEB Act in relation to the project. However, should the Minister refer the project to a Review Panel, the NEB may not take a regulatory decision under the NEB Act in respect of the project, until the Review Panel has completed its assessment and the requirements of the CEAA have been met.

Question 1 - Natural Justice in the Context of the Section 52 Proceeding

Ms. Biem and those parties in support of her motion assert that, in the absence of a completed CSR, they do not "know the case to be met". With respect, the Board disagrees. The CSR is a summary of the Board's findings on the environmental issues based on the evidence gathered during the hearing. This evidence consists of the draft CSR and all further evidence filed within the hearing process, which is available to all parties to the hearing. All parties have the opportunity to challenge the evidence of the applicant through written and oral questions, to provide contrary evidence, and to provide their analyses and views of Westcoast's evidence in argument. The information gathered and analysed through the hearing process will be the information upon which the Board will rely in reaching its conclusions and making its recommendations in the CSR.

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1 *Regulations Respecting the Coordination by Federal Authorities of Environmental Assessment Procedures and Requirements*, SOR/97-181, s. 10.

In the event that additional substantive information arises during the Minister's public comment period, there is sufficient flexibility in the Board's Rules to allow for parties to the hearing to provide further comment within the hearing process. Typically, in circumstances where there may be further filings after the scheduled oral process, the Board adjourns the hearing at the conclusion of final argument, rather than closing the record and terminating the proceedings, thereby leaving the record open. This allows for the possibility of a further process in relation to any evidence that comes forward during the CSR comment period. As master of its own procedure, the Board would determine, in the circumstances of each particular case, whether further submissions are needed and, if so, whether to complete the hearing through a further oral or a written process. In either case, the Board would provide a fair and equal opportunity for all parties to make submissions with respect to this additional information. In those cases, the hearing is not "completed" until after this further process is completed. At this time, the Board sees no procedural or policy reasons why it could not or should not exercise that option if necessary in respect of this GH-2-2002 proceeding.

Question 2 - Compliance with the CEAA

The environmental assessment of this project has been ongoing for approximately one year. During that time the applicant, the relevant federal departments and members of the public have had input into the development of the draft CSR. For the reasons stated earlier, the Board withdrew the delegation of the CSR to the applicant and established the current hearing process for the consideration of all relevant matters to the section 52 application, including the completion of the CSR. Some of the matters that the Board must consider under section 52 of the NEB Act overlap with matters to be considered under the CEAA. By hearing these matters at the same time, the Board attempts to avoid duplication between the CEAA and its own regulatory process.

The Board does not consider that in doing so it is purporting to "preclude the project from being referred to a CEAA review panel", as submitted by Ms. Biem. If the Minister determines pursuant to section 23 of the CEAA that:

a) it is uncertain whether the project is likely to cause significant adverse environmental effect, or

b) the project is likely to cause significant adverse environmental effects, or

c) public concerns warrant a reference to a mediator or a review panel.

The Minister **shall** refer the project to a mediator or a review panel in accordance with section 29 of the CEAA.

In the Board's view, Parliament has authorized Ministerial oversight of the environmental effects of projects requiring a CSR and thus the discretion provided to the Minister in section 23 of the CEAA cannot be fettered by the actions of the NEB.

Conclusion

In summary, under the process adopted by the Board to carry out its functions under the NEB Act and the CEAA, Ms. Biem and all other parties to the proceeding will have every reasonable opportunity to comment on and have input into the final CSR. It is the view of the Board that the current hearing process, which provides for the gathering and testing of the environmental evidence that will be used to complete the CSR, does not violate the principles of natural justice.

Further the Board is of the view that its process for completing the CSR cannot fetter the Minister's discretion under section 23 of the CEAA, either legally or practically. The Board is therefore satisfied that the current process for the consideration of this application under the NEB Act and CEAA is neither contrary to CEAA, nor beyond the Board's jurisdiction under the CEAA.

Accordingly, the Board would answer both questions raised in the Notice of Motion in the negative. As a result, the hearing of this application will proceed according to the schedule set out in the GH-2-2002 Hearing Order and Directions on Procedure.

Yours truly,

(Signed by)

Michel L. Mantha
Secretary
File 3200-W005-11
18 June 2002